

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1419 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgement?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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PANKAJ VALLABHDAS RAICHURA

Versus

ALPA VRAJLAL SISODIA

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Appearance:

MR SURESH M SHAH for Petitioner  
NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 07/07/2000

ORAL JUDGEMENT

1. The petitioner herein is the original opponent of Civil Miscellaneous Application No.67 of 1996. The aforesaid application has been filed by the respondent herein for getting custody of the child under the Guardians and Wards Act. The aforesaid application is

pending before the Court of 4th Extra Assistant Judge, Rajkot. During the pendency of that application, application Exhibit 11 was given on behalf of the present petitioner to the effect that the question about jurisdiction of the Court to be decided first as a preliminary issue. It seems that when the aforeaid application was pending, another Application at Exhibit 18 was given on behalf of the present petitioner, who is the opponent in the said Civil Miscellaneous Application No.67 of 1996. In Exhibit 18, it was prayed that before proceeding with the main application or any other ancillary applications in that proceedings, the question of jurisdiction may be decided first. It is the say of the original opponent that his application at Exhibit 11 should be heard first before deciding any other application in the proceedings. It seems that, perhaps, the opponent was interested in seeing that the application for interim relief may not be decided by the Court and, therefore, insistence was made to decide question of jurisdiction. Learned 4th Extra Assistant Judge, Rajkot, by his order dated 29th August, 1996, by a well-reasoned order, rejected that application. The Court found that the question of jurisdiction is a mixed question of law and facts and that the same cannot be decided at interim stage. The trial court, accordingly, rejected the aforesaid application at Exhibit 18. The aforesaid order is impugned in the aforesaid revision application at the instance of the original opponent.

2. This Court (Coram : M.H. Kadri, J.) issued rule on 3rd October, 1996 and granted interim relief as prayed for in the revision application, with the result that Civil Miscellaneous Application No.67 of 1996 is stayed by virtue of the aforesaid order. Today, the matter is called out for final hearing.

3. It was submitted by Mr.Shah, learned Advocate for the petitioner, that the learned trial Judge has not disposed of application Exhibit 11, which he has given for the purpose of getting the issue of jurisdiction decided first. According to him, Exhibit 18 was given only for deciding Exhibit 11 first before deciding other application and, therefore, according to him, at the time of deciding Exhibit 18, court has virtually disposed of his application at Exhibit 11, by observing that issue of jurisdiction is to be decided along with the suit as that question being a mixed question of law and facts.

4. It is no doubt true that Exhibit 18 was given by the present petitioner for the purpose of deciding Exhibit 11. However, it seems that while deciding

Exhibit 18, arguments are advanced and reasoning is also given by the learned Judge that question of jurisdiction is a mixed question of law and facts. So far as the impugned order at Exhibit 18 is concerned, I do not find any illegality in the aforesaid order and, therefore, the jurisdiction of this Court cannot be invoked, challenging the order at Exhibit 18, as I do not find any error of law, much less any error of jurisdiction, in deciding the said application. However, it is clarified that if Exhibit 11 is still pending, the learned trial Judge may also dispose of Exhibit 11 on merits as the same is also required to be disposed of one way or the other. Though, *prima facie*, it appears that the reasoning given by the learned Judge seems to be sound, however, when Exhibit 11 is still pending, the same may be also disposed of on merits and for that purpose, whatever observations, which are made by the learned trial Judge while disposing of Exhibit 18 or observations of this Court, may not be strictly taken into consideration. It is pertinent to note that because of stay of further proceedings granted by this Court, even interim application must not have been decided by the Court. Since this Court is rejecting this revision application and confirming the order of the trial court below Exhibit 18, the learned trial Judge is now directed to decide the application for any interim relief given by the present respondent, Alpaben Vrajlal forthwith. It is accordingly directed that if any interim application given by the present respondent Alpaben Vrajlal is pending, the learned trial Judge is directed to decide and dispose of the said application forthwith, in any case, not later than a period of one month from the receipt of the writ of this Court.

5. Writ of this Court to be sent forthwith to the trial court for complying with the directions.

6. Subject to what is stated above, I do not find any substance in this Revision Application and the same is dismissed. Rule is discharged. Interim relief stands vacated forthwith with no order as to costs.

7th July, 2000                    ( P.B. Majmudar, J. )

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(apj)